DOCUMENT RESUME

ED 221 991 EC 150 059

TITLE Due Process Procedures: A Guide for Parents and School Administrators. Second Revision.
INSTITUTION Oklahoma State Dept. of Education, Oklahoma City. Div. of Special Education.
PUB DATE 25 Feb 82
NOTE 48p.

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Disabilities; *Due Process; Educational Policy; Elementary Secondary Education; Guidelines; *Hearings; Legal Responsibility; Parent Role; School Districts; *State Standards
IDENTIFIERS *Education for All Handicapped Children Act; *Oklahoma

ABSTRACT

Intended for parents and school administrators, the guide presents Oklahoma state policies and procedures to guarantee due process protection to disabled children and their parents in regard to the identification, evaluation, and appropriate educational placement of children. Initial sections outline who may request a hearing and for what purpose, and procedures for requesting a due process hearing. Prehearing procedures are addressed in section 3 in terms of the local education agency (school) responsibility, the responsibility of parents or other representative, the responsibility of the state department of education's special education section, and the hearing officer responsibility. Sections 4, 5, and 6 briefly cover the mediation process, extension of time, and nonappearance. Guidelines for setting up the due process hearing are offered in a seventh section which addresses the hearing officer's responsibility, the setting, witnesses, evidence, attendees, and the prehearing conference. Outlined in Section 8, on the formal due process hearing, are guidelines regarding authority and procedures (in such areas as examination and cross examination, closing statements, and the written decision format). Financial responsibility of the local education agency, the parents, the state department of education, and the hearing officer is considered in Section 9. A final section focuses on the due process hearing decision appeal. Appendixes contain the regulations for due process in P.L. 94-142 (the Education for All Handicapped Children Act), a sample local education agency checklist for a due process hearing, and sample due process forms. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

0258

SCOPE OF

The ERIC Facility has assigned this document for processing to: EA EC

In our judgement, this document is also of interest to the clearinghouses noted to the right. Indexing should reflect their special points of view.

ED221991

Due Process in Special Education

GUIDELINES For Parents and School Administrators

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Jack Craddock

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Leslie Fisher, State Superintendent

EC 150059

DUE PROCESS PROCEDURES

Oklahoma State Department of Education
Special Education Section

A GUIDE FOR PARENTS AND SCHOOL ADMINISTRATORS

The Oklahoma State Department of Education, in compliance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) Executive Order 11246 as amended, Title IX of the Education Amendments of 1972, and other federal laws and regulations, does not discriminate on the basis of race, color, national orgin, sex, age, religion, handicap, or status as a veteran in any of its policies, practices, or procedures. This includes but is not limited to admission, employment, financial aid, educational and counseling services.

Final Adoption
by the
State Board of Education
August 24, 1978

First Revision - May 24, 1979
Second Revision - February 25, 1982

OKLAHOMA STATE DEPARTMENT OF EDUCATION

Leslie Fisher, State Superintendent
Lloyd Graham, Deputy Superintendent
Tom Campbell, Associate Deputy Superintendent
John Folks, Associate Deputy Superintendent
J. D. Giddens, Assistant Superintendent
Jack Strahorn, Assistant Superintendent
Murl Venard, Assistant Superintendent
Tommy Hodges, Executive Director

SPECIAL EDUCATION SECTION

Jimmie L. V. Prickett, Administrator
Tom Everidge, Assistant Administrator
Connie Siler, Assistant Administrator

TABLE OF CONTENTS

Introduction

Page

Section

I. Who May Request a Hearing and for What Purpose 1

II. How to Request a Due Process Hearing 2

III. Pre-Hearing Procedures Responsibilities of School, Parent, State Department of Education and the Hearing Officer 3-8

IV. Mediation. 9

V. Extention of Time. 10

VI. Non-Appearance 11

VII. Guidelines for Setting Up the Due Process Hearing 11-14

VIII. Formal Due Process Hearing 15-19

IX. Financial Responsibilities 20-21

X. Due Process Hearing Appeal 22-24

Appendix

A. P.L. 94-142 - Federal Register

B. Checklist

C. Forms

DUE PROCESS PROCEDURES

INTRODUCTION

Under the authority of the Education for All Handicapped Children Act of 1975, P.L. 94-142, and 70 O.S. Supp. 1978, Section 3-104, and the Oklahoma Administrative Procedures Act, 75 O.S. 1971, Sections 301 et seq., the Oklahoma State Department of Education, in keeping with the constitutional rights and privileges accorded its citizens, does hereby establish the following policies and procedures to guarantee due process protection to children and their parents in regard to the identification, evaluation and appropriate educational placement of children.

These policies and procedures in addition to the requirement of P.L. 94-142 and 75 O.S. 1971. Sections 301 et seq., shall be used by local educational agencies, parents and the state approved hearing officers in fulfilling their duties and responsibilities concerning the education of children.

I. WHO MAY REQUEST A DUE PROCESS HEARING AND FOR WHAT PURPOSE.

A. A due process hearing may be requested by the local education agency (the school) or the parents of the handicapped or purported to be handicapped child when a disagreement cannot be solved by informal parent conference or mediation.

B. These disagreements would concern proposal or refusal to initiate or change the identification, evaluation, educational placement of the child or the provision of a free appropriate public education to the child.

II. HOW TO REQUEST A DUE PROCESS HEARING

A. A request for a due process hearing may be initiated in the following manner:

1. If the parents request a due process hearing, they must present a written request for a hearing to the local school administrator stating the child's name, date of birth, current grade or class placement, and give the reason for challenging the identification, evaluation, placement or appropriateness of the education of the child in question. At the same time a copy of this request must be mailed to the State Department of Education.

2. If the Local Education Agency requests the due process hearing, it must provide written notice of the request to the parents, in the primary language of the home, informing them of the reason for the request. At the same time, a copy of this request must be mailed to the State Department of Education.

B. It is strongly recommended that all correspondence be certified mail, return receipt requested, to provide documentation.

C. The time lines concerning a due process hearing will begin when a written request is received by the State Department of Education, Special Education Section, from either the parent or the school.

III. PRE-HEARING PROCEDURES

A. LOCAL EDUCATION AGENCY (SCHOOL) RESPONSIBILITY

1. Correspondence to parents

a. RIGHTS
Detailed description of all the rights and procedural safeguards. SDE-Form I

b. INDEPENDENT EVALUATION
List of agencies which can provide an independent evaluation of the child's educational needs if desired by the parents. (Federal Register, August 23, 1977 §121a.503 (b):

"A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under 121a.506 (see Federal Register) of this report subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense.")

c. LEGAL COUNSEL
The fact that there are agencies in some areas from which legal counsel may be obtained for those unable to pay. (These would primarily be Legal Aid Societies within the community.) However, legal representation is not a requirement for a hearing.

d. ACCESS TO RECORDS
The parents or their representative, upon request, shall have the right and shall be given the opportunity, at any reasonable time, to inspect and review all education records regarding the identification, evaluation, education placement or the provision of a free appropriate public education of the handicapped child. The school may charge a reasonable fee for copies of such records, if the fee does not effectively prevent the parents from exercising their right to inspect and review such records.

e. EVIDENCE AND WITNESSES
The parties shall have the opportunity to present evidence and confront, cross-examine, and compel the attendance of witnesses. The parent shall pay the expense of any witness impelled to testify at the hearing by the parent other than officers, employees or agents of the local or state education agency.

f. STATUS OF CHILD DURING PROCEDURES
Assurance that the child will remain in his/her present educational placement until the final due process hearing and appeal decision has been issued (except that in emergency situations where the safety or health of the child or of other persons would be endangered by continuing the present placement). Educational placement may be changed by agreement of <u>both</u> parties (parent/school).

g. NOTIFICATION
A statement informing the parents that they will be notified at least ten (10) calendar days prior to the hearing, of the identity of the hearing officer, and of the date, time and location of the hearing.

h. TIME LINES
That a decision by an appointed, qualified hearing officer shall be issued within forty-five (45) days from the date when the written request is received by the State Department of Education, Special Education Section.

i. COMMUNICATION WITH HEARING OFFICERS
And, that communication with the appointed hearing officer by either party without the presence of the other party is prohibited. That if any communication is necessary to the hearing, such communication shall be reduced to writing and copies thereof shall be mailed to all involved parties including the SDE.

2. Mediation
Within ten (10) calendar days (or as soon as possible) of the initial hearing request, the Local Education Agency (school) shall attempt to resolve the disagreement by an informal parent conference and/or mediation. (Note: See Section IV, Mediation.) If resolution of the problem occurs at this time, a signed cancellation must be sent to the State Department of Education. The person(s) requesting the hearing must sign to cancel the hearing. (Form No. 2).

3. Postponement

a. If both parties agree in writing to a postponement of the hearing, the State Department of Education, Special Education Section, may grant this request.

b. If either party is in disagreement concerning a postponement, the assigned Hearing Officer will make the decision.

c. Requests for postponement must be in writing and received by the State Department of Education, Special Education Section, or Hearing Officer no later than five (5) days prior to the hearing.

4. Other School Responsibilities

a. Exchange with the parents no later than five (5) calendar days before the hearing the following:
(1) copies of all evidence,
(2) a list of witnesses who may be called to testify,
(3) no evidence or witnesses may be presented at the hearing unless the five day prior notice has been followed.

b. Provide a surrogate parent to represent a child, when required, from the list approved by the SDE. When the child is represented by a surrogate parent, such information concerning the surrogate parent shall be introduced into the record of the hearing by the LEA, including information leading to the assignment and appointment of the child's particular surrogate parent.

c. Determine and ensure SDE notification if an interpreter will be needed. (For Hearing Impaired or native language).

d. Provide for the appearance of appropriate school personnel for testimony at the hearing as determined by the LEA or requested by the parents at no cost to the parents.

e. Provide evidence and testimony at the hearing to substantiate the position of the school district.

f. Assure that the hearing location is in readiness, accessible and that it is reasonably convenient to the parent and child involved.

g. Follow proper time lines (See LEA Checklist)

1. Notify SDE upon receipt of request of due process hearing by either party.

2. Be aware the beginning date of the procedure is when the SDE receives request.

3. Upon receipt of request for records by parents/ representative; send copies within seven (7) calendar days.

4. Make mediation attempt immediately but not later than ten (10) calendar days after request.

5. Submit evidence and list of witnesses at least five (5) days before the hearings, to the parents.

6. If it is necessary to subpoena witnesses and/or records, make the request at least ten (10) days prior to the hearing. Contact the SDE for further information.

7. Upon appointment of the Hearing Officer by the SDE, make any challenge concerning the impartiality of the Hearing Officer immediately to the State Department of Education, Special Education Section.

(a) If the SDE finds that the reasons for questioning of impartiality are valid, a new H.O. will be appointed.

(b) If the SDE determines that the H.O. is impartial, no new H.O. is appointed.

(c) At the hearing, the H.O. cannot be challenged or removed; however, any objections may be entered into the hearing record.

B. PARENTS/REPRESENTATIVE RESPONSIBILITY

1. Parents are encouraged to participate in the formal parent conference and/or mediation with the school. (Note: See Section IV, Mediation) If resolution of the problem occurs at this time, a signed cancellation must be sent to the State Department of Education. The person(s) requesting the hearing must sign to cancel the hearing (Form No. 2). If both parties agree, in writing, to a postponement of the hearing, the SDE, Special Education Section, may grant the request. If either party is in disagreement concerning a postponement, the assigned H.O. will make the decision.

2. Parents must continue to send the child to school in compliance with the compulsory attendance laws.

3. Exchange with school five (5) calendar days before the hearing the following:

   (1) copies of all evidence
   (2) a list of witnesses who may be called to testify. Parents must list <u>all</u> witnesses including local school personnel that they want to testify. Even if that witness appears on the other party's list, all witnesses for each party must be listed.
   (3) no evidence or witnesses may be presented at the hearing unless the five day prior notice has been followed.

4. Notify the school if an interpreter (deaf or native language) is needed, at least ten (10) calendar days prior to the hearing.

5. Decide if the hearing will be an open or closed hearing. Since a hearing will involve confidential information, only the parent(s) can make this decision. The parent must sign a written statement requesting an open hearing. (Form 4) The parent may decide whether the child in question attends the hearing. Without a signed consent all hearings will be closed.

6. If it is necessary to subpoena witnesses and/or records, make request to the hearing officer at least ten (10) days prior to the hearing.

7. Upon appointment of the Hearing Officer by the SDE, make any challenge concerning the impartiality of the Hearing Officer immediately to the State Department of Education, Special Education Section.

   (a) If the SDE finds that the reasons for questioning of impartiality are valid, a new H.O. will be appointed.

   (b) If the SDE determines the H.O. is impartial, no new H.O. is appointed.

   (c) At the hearing, the H.O. cannot be challenged or removed; however, any objections may be entered into the hearing record.

C. STATE DEPARTMENT OF EDUCATION, SPECIAL EDUCATION SECTION. RESPONSIBILITY

1. Upon receipt of a request for a due process hearing, the SDE will notify both parties of:

   a. A date, time and location of the hearing

   b. The identification of the Hearing Officer, at least ten (10) calendar days prior to the hearing. Any challenge concerning the impartiality of the Hearing Officer must be made immediately by either party. Ensure that the Hearing Officer assigned to a particular hearing is impartial. Any party to a due process hearing may challenge the assignment of a particular hearing officer. Upon a showing that the appointed Hearing Officer is biased or other good cause, a new Hearing Officer will be assigned.

2. Provide, at public expense, appropriate SDE personnel for evidence and testimony as requested by the LEA or parents.

3. Provide a list of interpreters for the deaf or interpreters fluent in the primary language spoken in the child's home, if requested.

4. Upon request, provide a trained SDE person to act as chairperson for the mediation.

5. Provide the LEA with an approved list of available persons to serve as surrogate parents, upon request.

6. Upon request, provide forms concerning issuing of subpoenas.

7. Contact the school concerning recording/taping of the hearing.

D. HEARING OFFICER RESPONSIBILITY

1. Compel attendance of witnesses and/or copies of records. The Hearing Officer will issue any subpoenas needed. Subpoenas will be issued to those witnesses and/or for records that have direct relationship to the case. The Hearing Officer has the right to question the relevancy of the request(s) for subpoenas.

2. Require the furnishing of information and the production of books, records, papers or other evidence that may be necessary and proper for the hearing upon request of either party.

3. Accept depositions, if requested.

4. If there is disagreement concerning a postponement the assigned Hearing Officer will make the decision. If the postponement is agreed upon by both parties, the SDE will grant the postponement. All requests for postponement must be in writing.

5. Will not correspond with either party without the knowledge of the other party. If communication is necessary to the hearing, such communication shall be reduced to writing and copies mailed to all involved parties, including the SDE.

6. Grant extension of time (See Section V).

IV. MEDIATION

A. The Oklahoma State Department of Education does hereby establish the policy that the LEA and the SDE shall actively seek to resolve disputes between parents and educators concerning the education of a handicapped, or purported to be handicapped, child through mediation.

B. The Comment to Section 121a.506, the federal regulations to P.L. 94-142, provides the following:

> "Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State Educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's right under this subpart."

C. Mediation may be requested by either party but must be attended by both parties. The parties involved may or may not have representatives at the mediation, however, those persons attending should be in a position of authority to make decisions.

D. The mediator must be a "Third Party" person who is impartial. Although the mediator is not in a position to make any decisions, neutrality is imperative to conduct the mediation fairly. Trained mediators may be requested from the State Department of Education, Special Education Section.

E. Either party may refuse to participate in a conference without prejudice to any procedural safeguard afforded under this manual or any applicable state or federal law. Also, the mediation meeting does not alter the required time lines.

V. EXTENSION OF TIME

There can be delays in the forty-five (45) day time line if the following regulations are followed.

A. A request for postponement is made in writing and in the Hearing Officer's possession at least five (5) calendar days prior to the hearing date.

B. There are valid reasons such as:

1. Need for additional time to secure new evidence.

2. Conflicting schedules of either or both parties.

3. Justifiable circumstances beyond control.

C. If both parties agree in writing to a postponement of the hearing the SDE, Special Education Section, may grant the request.

D. If either party is in disagreement concerning the postponement, the assigned Hearing Officer will make the decision.

E. After the hearing has been convened, any continuation or delay will be at the discretion of the Hearing Officer. If possible, the date for reconvening will be set before the hearing is adjourned and put into the record.

VI. NONAPPEARANCE

In the event that one of the parties is not present at the hearing, and as long as notification procedures have been adhered to, the hearing may proceed. Proof shall be entered into the record that the absent party had proper and required notice of the hearing. The hearing officer should then make the decision, based upon the evidence presented; but may decide to reconvene the hearing, if necessary.

VII. GUIDELINES FOR SETTING UP THE DUE PROCESS HEARING

A. The Hearing Officer's responsibility is to maintain a professional atmosphere and to insure that the proceedings are not abused so that each party may present his evidence and testimony in a fair and impartial manner. The Hearing Officer has the authority for complete control of the meeting.

B. Setting: The hearing shall provide both parties with the opportunity to be heard, to present their evidence and testimony and to confront and cross-examine witnesses.

1. The hearing room should be of an appropriate size to accomodate all members of both parties and accessible to handicapped. In the case of an open hearing the room must be large enough to provide adequate seating for the public.

2. An accessible second room must be available for the sequestering of the witnesses.

3. In order to conduct the hearing in a productive atmosphere consideration should be given to appropriate seating, table space to accommodate the Hearing Officer and both parties (three tables preferred), noise control, temperature, etc.

4. Since all hearings are tape recorded, the setting must be conducive to proper recording. Advice concerning this may be obtained from the SDE due process hearing consultant.

C. Witnesses

1. All witnesses shall be sequestered in open and closed hearings at all times. After testimony witnesses may be excused by the Hearing Officers to leave if both parties agree that no further testimony is needed.

2. In certain instances, the party or their representatives may wish to investigate a witness's background to obtain information regarding credentials, qualifications and training. The Hearing Officer will need to determine whether or not the background information is necessary to bring into testimony. In most cases, the determination that the teacher is certified to serve his/her position by the State of Oklahoma is sufficient. The Hearing Officer will need to keep the focus on the appropriateness of activities for the child and may curtail interrogation which is not designed toward the goal.

3. A hearing may be rescheduled, when necessary, upon a showing by any party that a necessary witness is unable to attend at the scheduled time due to uncontrollable circumstances.

4. Each party must list all witnesses they may use.

   a. The school will list the school personnel.

   b. There may be duplication. Each party must list the witness on their list even if that person is on the other party's list.

   c. No witnesses will be allowed who are not on the lists. However, if both parties agree to having a witness who is not on either list, the Hearing Officer may rule to accept such a witness.

5. The school will make the arrangement for school personnel to be witnesses (those persons on the school's and parent's lists).

6. Parent's witnesses, other than school personnel, will be notified by the parent.

D. Evidence

1. Reports submitted by the parent not based on factual data but simply a statement of the child's behavior can be accepted as evidence. Evidence given by parents, non-professionals, and others associated with the child may be considered.

2. Copies of all written reports used as evidence must be submitted to the Hearing Officer and will become a part of the record.

3. Exhibits - any document to be placed in evidence should be marked by the Hearing Officer substantially as follows:

   "School District Exhibit I; 7-15-74 (H.O.'s initials)" or

   "Parent Exhibit A; 7-15-74 (H.O.'s initials)"

4. If information obtained from a taped recording is to be submitted as evidence, it must be in the form of a typed transcript.

5. Questions concerning the evidence should pertain only to the document itself and its admissibility. Objections may be offered to its admissibility, after which the Hearing Officer should state whether the document is received in evidence or rejected and why.

6. The strict rules of evidence are not applicable to due process hearings. Any evidence deemed of probative value may be considered by the Hearing Officer during the course of the hearing.

E. Who May Attend

The Hearing Officer shall exclude all persons from the hearing other than the parties, counselors of the parties, SDE representative, witnesses (who will be sequestered) and Hearing Officer "trainees", unless the hearing is open to the public.

G. Conference: Pre-Hearing

The purpose of the pre-hearing conference is to expedite the due process hearing.

On the day of the hearing upon arrival of both parties, the Hearing Officer will meet with the parties' representatives to:

1. identify representatives,
2. clarify the purpose of the hearing,
3. determine if procedural safeguards have been followed,
4. establish hearing protocol.
5. query parties regarding preliminary problems, objections or questions and
6. discuss other issues of special concern.

At the end of this conference, the Due Process Hearing shall be convened.

VIII. FORMAL DUE PROCESS HEARING

A. Authority -

Due process includes a set of procedures to insure that the civil rights assured by P.L. 94-142 and Section 504 of P.L. 93-516 are not denied. A part of this process is the convening of a meeting of the parties and their representatives.

The purpose of the meeting is to obtain all possible information relative to the issue which created the impasse between school and parents.

The due process hearings are administrative procedures, not legal courts of law. The guidelines in P.L. 94-142 and Section 504 of P.L. 93-516 are not definitive or extensive and leave the development of administrative law and procedure for these hearings to the individual states. It must be noted that the development of procedures for implementing Section 121a.501 of P.L. 94-142 is left to the State Department of Education under its authority in State Law (See Article III, Section 33 (2), School Laws of Oklahoma 1980)

The Hearing Officer's authority is provided for in the Oklahoma State Plan as amended under Part B of the Education of the Handicapped Act P.L. 93-380, P.L. 94-142 and Oklahoma Administrative Procedures Act, 75, O.S. 1971, Section 301, et. seq.

It must be clearly understood by both parties, school/parent, and their representatives that the Hearing Officer has the authority and control of the hearing at all times.

B. Procedures

1. Convening the hearing by the Hearing Officer (official recording begins)

   a. The opening statement by the Hearing Officer shall include:

      1. Self-introduction, function, role and authority,

      2. Establishing whether hearing is open or closed,

      3. Introduction of persons representing each party (name, position, address)

      4. Statement regarding the confidentiality of the proceedings.

      5. Reason for hearing

      6. Preliminary problems, objectives or questions (as may have been determined by pre-hearing conference)

      7. Ground rules: the Hearing Officer must assure both parties that they will each have an opportunity to fully present their positions, documentary evidence and/or testimony which is relevant but not overly repetitive or redundant.

8. Questions concerning due process compliance
   a. All procedural safeguards have been complied with, or
   b. Specific areas of non-compliance are read into the record.

9. Establish that both parties have exchanged the evidence at least five (5) days before the hearing. At this time, objections will be heard and ruled on.

b. Submission of evidence by both parties

2. Opening Statements by the Parties

a. The representative of the complaining party (the party requesting the hearing) shall present its position in a brief oral statement.

b. The representative of the responding party shall present its position in a brief oral statement.

c. These statements are not considered to be evidence or testimony and shall not be considered in the decision making process.

d. No objections may be made by either party during opening statements.

3. Examination and Cross-examination

a. Identification: each witness will:

(1) give name, address and relationship to the case and

(2) answer this question: "Do you affirm that your statements are true to the best of your knowledge?"

b. The complaining party (school or parent) shall present its case first and the responding party (school or parent) shall then present its case. Following direct examination, each school district's witness shall be subject to cross-examination. Cross-examination should be concerned with the evidence presented in direct testimony. However, since the paramount interest of the child is the major intent of the hearing, cross-examination may explore areas not given under direct testimony. However, the hearing officer shall reserve the right to limit interrogatories that appear not to be relevant to the issue at hand.

c. Following presentation of the complaining party's case, the responding party shall then be given an opportunity to present evidence and testimony that shall follow the same procedures as those utilized in the case of the complaining party

d. If it appears to the hearing officer that, during the presentation of a specific witness, sufficient clarity was not obtained concerning the presented issue, then the hearing officer shall have the right to pursue examination of the witnesses.

e. In addition, following direct testimony and cross-examination, either party shall have the right to recross and redirect examination. However, this practice will be curtailed by the Hearing Officer whenever deemed necessary.

f. The Hearing Officer will query both parties as to whether or not they wish to present further documentary evidence or testimony.

g. If the hearing officer does not think sufficient evaluation and/or evidence is available to make a decision, then the Hearing Officer may order the child to be further evaluated at the expense of the Local Education Agency. The hearing will be reconvened in order to present the additional evaluation.

4. Closing Statements

a. The representative of the complaining party shall summarize its position in a brief oral statement.

b. The representative of the responding party shall summarize its position in a brief oral statement.

c. These summary statements are not considered to be evidence or testimony and shall not be considered in the decision making process.

d. No objections may be made by either party during closing statement.

5. Closure of the Hearing

a. The Hearing Officer's closing statement will include the following: He/she will

(1) Obtain a copy of the record

(2) Study evidence and testimony carefully

(3) Render a decision based on evidence, testimony, state and federal law.

(4) Assure the time of the decision will be within the mandated time lines.

(5) Send both parties a copy of the decision

(6) State that this decision is binding upon the parents (or the child, if over the age of majority) and the Local Education Agency unless it is appealed.

(7) Explain appeal process

b. Hearing is officially closed, giving date and time (this goes into record)

c. After the hearing, the Hearing Officer should obtain addresses from both parties where the decision will be sent.

d. Make sure there are copies of all exhibits.

6. Decision

The Hearing Officer has the duty to render a decision, based solely upon evidence and testimony acquired during the hearing process, within forty-five (45) days of the initial request. (Unless an extension of time has been granted - See Section V on Extension of Time)

a. Such decision shall be in writing and shall be mailed by certified mail, return receipt requested, to both parties and the State Department of Education, Special Education Section.

b. The decision of the Hearing Officer shall include findings of fact, reasons thereof and conclusions thereon. If the decision disapproves a proposed education program, it shall include a statement of an adequate and appropriate educational program for the child.

c. The decision of the Hearing Officer shall state that this decision is binding upon the parents or the child (if over the age of majority) and upon the local education agency, subject to procedures for administrative or judical appeal. (See Written Decision Format for statement to be made)

d. Written Decision Format

(1) Cover page stating:
   (a) Student's name and case number
   (b) Reason for hearing
   (c) Parties to hearing: parent's name/school and representatives of each party
   (d) Request by school or parent
   (e) Date of hearing, time and location
   (f) List of witnesses
   (g) List of evidence (brief description if needed)
   (h) List date of decision

(2) Decision - very <u>clearly</u> stated so there can be no misunderstanding of exactly what the decision is.

(3) Statement giving the facts and reasons for reaching the decision.

(4) Statement of related concerns if appropriate.

(5) Statement that if either party is aggrieved by this decision an appeal may be made to the State Department of Education, Special Education Section, for a review of the decision by an Appeal Review Committee. This request must be done within ten (10) calendar days after date of receiving the decision.

(6) Signature of Hearing Officer at bottom of the above written decision format.

IX. FINANCIAL RESPONSIBILITY

A. Local Education Agency (School)

1. Provide officers, employees or agents of the LEA, for evidence and testimony at the hearing.

2. Provide officers, employees or agents of the LEA, at the request of the parents, without cost to the parents.

3. Cover cost of the LEA's representative and witnesses.

4. Determine and notify State Department of Education if an interpreter will be needed. Any cost involved will be paid by the school.

5. Pay for any independent educational evaluation requested by the Hearing Officer as part of the hearing.

6. Reimburse the Hearing Officer for all his/her expenses relative to the hearing. This expense will be approved by the Special Education Section and will include: travel, food, lodging (if necessary) and cost of conducting the hearing and the decision making.

7. The cost of the recording of the proceedings and subsequent transcript.

8. Any cost for facilities (i.e., meeting room) and equipment rental (for recording).

B. Parents

1. Parents may be charged a reasonable fee for copies of the child's records, if the fee does not effectively prevent the parents from exercising their right to inspect and review such records.

2. Pay for their own legal counsel or representatives if there is cost involved. This also would include parent's witnesses if there is any costs. School personnel as witnesses will be at no cost to the parents.

3. Any travel expense of the parents, their representative and their witnesses will be the responsibility of the parents.

C. State Department of Education

1. Any cost involved with training Hearing Officers will be handled through SDE in-service.

2. The appointment of the Hearing Officer, (i.e., correspondence, telephone calls, etc.) will be handled by the SDE at no cost to the school or parents.

3. Upon request, SDE personnel will serve as witnesses or present evidence and testimony at no cost to either party. (including time and travel)

D. Hearing Officer

Although the Hearing Officer has no financial responsibilities, he/she must fill out the proper forms for all expenses. This will be sent to the SDE for approval and the SDE will send to the school for reimbursement. (See SDE - Form 5A, Due Process Hearing)

X. DUE PROCESS HEARING DECISION APPEAL

To guarantee due process protection to children and their parents in regard to the identification, evaluation and appropriate educational placement of the child, there is a procedure by which either party, for any reason, who is not in agreement with the Due Process Hearing Decision may appeal. This right to protest the decision is addressed in the Federal Register, 121a.510 (appendix A) and is in the form of an appeal to the Oklahoma State Department of Education, Special Education Section.

A. The procedures for this are:
Within ten (10) calendar days of the receipt of the Due Process Hearing decision, a written appeal (by letter or Form 6) will be made to the State Department of Education, Special Education Section, Room 263, Hodge Building, 2500 N. Lincoln, Oklahoma City, Oklahoma 73105.

1. Appeal request letter is date stamped and logged in;

2. Appeal Chairman writes memorandum to both parties indicating an appeal request has been received;

B. An Appeal Review Committee will be formed to hear the protest. (Federal Register, August 23, 1977 - 121a.510 & 20 USC, Section 1415C)

1. The "Appeal Review Committee" is a variable entity, however, the team generally will consist of three (3) individuals:

   a. The Chairman, appointed by the State Superintendent of Public Instruction through the State Board of Education;

   b. One person selected by the Chairman from the Special Education Section of the State Department of Education; and

   c. A second person selected by the Chairman from other State Department of Education staff. This third individual would generally be selected because of specific competencies related to the issues of each separate case.

In some instances, the Review may be done by the Chairman alone. In other instances, the Review will be done by two (2) individuals. Each case will be treated individually, depending on the degree of complexity of the issues involved.

2. Appeal Chairman conducts a preliminary review of the evidence, testimony, and transcript of the local hearing;

3. Appeal Chairman selects a tentative Appeal Review Committee, preliminary findings are discussed, and decision made as to need for additional data or new evidence;

4. The Appeal Review Committee will have no direct correspondence with any of the parties in the case without making such correspondence available to all parties. Telephone contact should be limited to clarifying procedure and establishing time and place for a formal review, if needed;

5. Appeal Chairman notifies the parties of:

   a. The need for more evidence and a formal hearing; or,

   b. The decision that no additional evidence is needed; no formal hearing will be held and a review decision will be forthcoming.

6. If a formal hearing is needed, the Appeal Chairman establishes the time and date and notifies the parties. Time and date are subject to the availability of the parties and can be delayed by request if substantiated by reasonable cause.

7. Both parties will be notified of their right to submit written briefs if no formal meeting is to be held;

8. Both parties will be notified of all hearing rights if new evidence or oral arguments are requested by the Appeal Review Committee.

C. The following time lines will apply to the Appeal Process:

1. Appeal must be requested within ten (10) calendar days of the receipt of the initial hearing decision.

2. The intent or desire to introduce <u>new</u> evidence or testimony must be communicated to the State Department of Education, either orally (confirmed in writing) or written within ten (10) calendar days of the parties' receipt of the notice of an appeal. Copies of new evidence or a list of new witnesses and the general thrust of their testimony should accompany the request to present new material. If the initial request is by telephone, the petitioner should be prepared to indicate the general nature and thrust of the proposed new material and send the written confirmation as soon as possible. The Appeal Chairman may accept new evidence which may or may not be entered into the record depending upon the nature and relevancy of the new evidence submitted. In any event the new evidence submitted must be made available to both parties <u>by the party submitting such evidence</u>.

   If the new evidence is entered into the record a formal hearing will be held unless <u>both</u> parties agree in writing to the submission of the new evidence and do not desire a hearing to challenge said evidence.

   Delays requested in the submission of new material or evidence will be treated as a request for a delay in the review and may result in the decision being delayed a proportionate time. Any request for a delay must be submitted at least five (5) calendar days prior to the formal hearing or the 30 day decision due date.

3. If a formal appeal meeting is held, the parents have the right to determine if it shall be open or closed. A form, signed by the parents will be required and it must be in the Appeal Review Committee's possession five (5) calendar days prior to the formal appeal hearing if the meeting is to be open. (see Form 7)

4. If a formal appeal meeting is held, all documentary evidence (new) and the names of witnesses and the general thrust of their testimony (new) must be exchanged by each party and be in their possession at least five (5) calendar days prior to the meeting. Any material not meeting the above requirement will be accepted only with the consent of both parties.

5. Appeal review decisions will be in the mail within thirty (30) calendar days of the receipt of the appeal request in the State Department of Education Appeal Chairman's office. To prevent delay, appeal requests should be marked: Attention: Chairman Appeal Review Committee, Due Process Hearings.

6. Delays in the thirty (30) calendar day time line may occur if:

   (a) Either party requests additional time to secure new evidence, subject to the Appeal Review Committee's decision that new or additional evidence is needed;

   (b) A formal hearing is to be held and either party requests a postponement because of conflicting schedules or other valid cause for delay;

   (c) The Appeal Review Committee requests additional information which would require a time extension; or

   (d) The Appeal Review Committee requires additional time due to justifiable circumstances beyond their control.

D. The decision made by the Appeal Review Committee is final, unless a party brings a civil action under P.L. 94-142, Federal Register 121a.512 (Appendix A).

APPENDIX A
P.L. 94-142 - FEDERAL REGISTER

FEDERAL REGISTER
Tuesday, August 23, 1977

Department of Health, Education and Welfare Office of Education

Education of Handicapped Children Implementation of Part B of the Education of the Handicapped Act P.L. 94-142

§121a.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in §121a.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416 (b) (2).)

Comment: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

§121a.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
(20 U.S.C. 1414 (b) (2).)

§121a.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State Advisory Panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.
(20 U.S.C. 1415 (d).)

§121a.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under §121a.511.

§121a.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §121a.508 apply;

Cont. §121a.510

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under §121a.512.

(20 U.S.C. 1415 (c), (d); H. Rep. No. 94-664, at p. 49 (1975).)

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Section 121a.508, relating to hearings, also apply.

§121a.511 Civil Action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under §121a.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under §121a.510 has the right to bring a civil action under Section 615(e)(2) of the Act.

s121a.512 Timelines and convenience of hearings and reviews.

(a) The public agency shall insure that no later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that no later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415).

(a) During the pendency of any administrative or judical proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415 (e) (3).)

Comment. Section 121a.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

APPENDIX B
CHECKLIST

LEA (School) Checklist for Due Process Hearing

	Form	Time lines	Date Accomplished
I. Request for Due Process Hearing			
A. Initiated by parent: send copy to SDE	Letter	Immediately	
B. Initiated by school: send copy to parent and SDE	Letter	Immediately	
C. Send parents copy of rights	Form 1	Immediately	
D. Send copy of child's records to parent or their representative, if requested			
II. Attempt Settlement through Mediation		Within 10 days of the request or as soon as possible	
A. Set date for mediation (working with parent)			
B. Request mediator from SDE			
C. Cancellation (if possible)			
III. Set Up Hearing			
A. Obtain date from SDE		As soon as possible	
B. Obtain name of Hearing Officer from SDE (contact SDE if question of impartiality of Hearing Officer)		At least ten (10) calendar days before hearing	
C. Obtain request from parent if it is to be an open hearing	Form 4	At least five (5) calendar days before hearing	
D. Complete information exchange	Form 3	At least five (5) calendar days before hearing	
E. Exchange copies of evidence		At least five (5) calendar days before hearing	
F. Notify all witnesses of time and place of the hearing.	Letter	At least five (5) calendar days before hearing	
Note: If subpoenas are needed for witnesses or evidence, this must be done before the five (5) day deadline because of the extra time needed to process.	Request to Hearing Officer	At least ten (10) calendar days before hearing	

	Form	Time lines	Date Accomplished
IV. Hearing Decision received			
V. Appeal, if requested	Letter	At least ten (10) days after receiving the decision.	
VI. Pay Hearing Officers Expenses	Form 5 (Received from SDE)	As soon as possible	
VII. Pay for Transcript		As soon as possible	

APPENDIX C
FORMS

Due Process Rights of Parents

1. The right to be represented by legal counsel.
2. The right to bring witnesses.
3. The right to request certain school personnel to be present.
4. The right to cross-examine.
5. The right to obtain an independent evaluation.
6. The right to request an open hearing, if desired (Note: Unless requested it will be a closed hearing to preserve confidentiality)
7. The right to examine and reproduce all school records at reasonable cost.
8. The right to obtain a record of the hearing upon written request.
9. The right to both parties (school and parent) to review all evidence to be introduced at least five (5) days prior to the hearing.
10. The right to ask for a Due Process Hearing Appeal review if you are in disagreement with the hearing decision.

CANCELLATION OF DUE PROCESS HEARING

A request to the State Department of Education to conduct a Due Process Hearing has been made by _____ (School District) and _____ (Parent) concerning the appropriate education for _____ (Student). Through a prehearing conference and/or mediation, the request is being cancelled by the undersigned. Both parties hereby agree that a Due Process Hearing is no longer necessary to settle the disagreement.

_____
Signature of Parent/Guardian

_____
Signature of School Administrator

_____
Date

Mail to:
Special Education Section
Coordinator for Due Process Hearings
State Department of Education
Hodge Building - Room 2-63
Oklahoma City, Oklahoma 73105

Phone: (405) 521-3351

SPECIAL EDUCATION DUE PROCESS INFORMATION SECTION

Completion of this form by both parties (school/parent) will provide specific information to the state coordinator about the pending Due Process Hearing. It should be completed by both parties and mailed to the State Department of Education, Special Education Section. It is necessary that both parties agree on the place and time at least ten (10) days before hearing. Each party must also see that a complete list of witnesses and evidence is given to the other party at least five (5) days before the hearing.

I. Date:_____

II. Parent's Name_____

Address_____

Phone_____

III. Child's Name_____ Age_____

IV. School Name_____

Administrator_____

Address_____

Phone _____

V. Request for Due Process Hearing made by_____
(School or Parent)

VI. Reason for Request_____

_____

_____

_____

VII. At the request of the parent, this hearing _____will or _____will not (check one) be open to the public. If the hearing is to be open, complete Form #4 (or similar signed parent's permission for an open hearing).

VIII. Will an interpretor for the deaf or a person fluent in the primary language of the home be needed? Yes_____ No_____

If yes, describe_____

The State Department of Education will arrange for the interpretor if needed.

IX. Persons who may be called to testify: (school)

Name	Title	Address & Phone

X. Persons who may be called to testify: (parent)

Name	Title	Address & Phone

OPEN HEARING REQUEST FORM

I, _____, the legal guardian
(Parent's Name)

of _____, am requesting that
(Student's Name)

this hearing be open to the public and hereby waive our rights concerning the confidential material which may be discussed during the Due Process Hearing to be held _____.
(Date)

I understand that in order for the Hearing Officer to reach a decision, confidential information pertaining to our child may be discussed in the Due Process Hearing. I also realize that by having an open hearing, information brought out during the hearing cannot be guaranteed to be kept confidential. Realizing all of the above statements, I do hereby request that the Due Process Hearing be open to the public.

Signed:_____ Date:_____
(Parent's Name)

SDE-Form 5A
Due Process Hearing

HEARING OFFICER EXPENSES

Name _____ Date _____

Address _____

_____ Social Security # _____

Due Process Hearing at _____ (School) on _____ (Date).

Item	Explanation		Amount
Travel (same as current rate for state employees)	Home to Hearing Site (Round Trip)	_____	
	Turnpike Tolls	_____	
	Other (Explain)	_____	
	Total	_____	_____
Lodging (same as current rate for state employees)	Number of Nights (Receipt Attached)	_____	_____
Meals @ $5.00 each	Number of Meals	_____	_____
Compensation Hearing $100 Per Day (8 hrs. or less) Decision $150 (Writing)	Hearing	_____	
	Decision	$150.00	
	Total	_____	_____
Other Expenses	Secretarial Services	_____	
	Copying	_____	
	Postal (Receipt Attached)	_____	
	Phone Calls (Explain)	_____	
	Other (Explain)	_____	
	_____		
	_____		
	Total	_____	_____
		TOTAL	_____

Comment _____

_____

_____

These expenditures (Form 5) were necessary in conducting the Due Process Hearing involving _____ (school district) and _____ (parent)

An accurate description is given for each expenditure. Upon receiving the check for the total cost, I will be responsible for paying all of the above expenses, having the appropriate person sign their "received payment", and mail this completed form back to the State Department of Education with receipts attached.

_____ (Hearing Officer)	_____ (Hearing Officer)
_____	_____
_____	_____
_____ (Address)	_____ (Address)
_____ (Date)	_____ (Date)

The School District will send the Hearing Officer(s) a check in the amount of _____ (total cost) to cover the total of the approved Due Process Hearing expenditures. The Hearing Officer(s) will complete the form for reimbursing the appropriate persons and have them sign upon receipt of payment.

_____ (State Department of Education)

_____ (Date)

SDE Form 6
Due Process Appeal Review

REQUEST FOR DUE PROCESS APPEAL REVIEW

I would like to request an Appeal Review Committee to review the record of the Due Process Hearing conducted at _____ on _____ (date) concerning the handicapped or purported handicapped child _____; and make a decision as to the validity of the Due Process Hearing Officer's decision.

I do not agree with this decision because _____

_____

_____

_____

_____

If new evidence is to be presented at the Appeal Review, it must be sent to the Oklahoma State Department of Education, Special Education Section, Appeal Review Chairman and the other party.

Signed: _____ _____
(Parent)

_____
(Address)

_____
(Home Phone) (Business Phone)

_____
(School Administrator)

_____
(School)

_____
(Address)

( ) _____
(Telephone)

Copy to other party

SDE Form 7
Due Process Appeal Review

OPEN HEARING REQUEST FORM

DUE PROCESS APPEAL

I, _____, the legal guardian
(Parent's Name)

of _____, am requesting that
(Student's Name)

this Appeal Review be open to the public and hereby waive our rights concerning the confidential material which may be discussed during the Appeal Review held _____.
(Date)

I understand that in order for the Appeal Review Committee to reach a decision, confidential information pertaining to our child may be discussed in the Appeal Review. I also realize that by having an open review, information brought out during the review cannot be guaranteed to be kept confidential. Realizing all of the above statements, I do hereby request that the Appeal Review be open to the public.

Signed: _____ Date: _____
(Parent's Name)

Return to:
Chairman, Appeal Review Committee
Special Education Section
State Department of Education
2500 N. Lincoln
Oklahoma City, Oklahoma 73105